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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,957	03/01/2004	Jerry L. Landers	6555/427	2160
757 7590 08/03/2009 BRINKS HOFER GILSON & LIONE P.O. BOX 10395 CHICAGO, IL 60610				
EXAMINER NICOLAS, FREDERICK C				
ART UNIT		PAPER NUMBER		
3754				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/790,957

Applicant(s)

LANDERS ET AL.

Examiner

Frederick C. Nicolas

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 April 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 20-22, 24, 28-34, 36, 38-43, 45-48 and 50-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 38-42 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-6, 20-22, 24, 28-30, 32-34, 36, 43, 45-48 and 50-52 is/are rejected.
- 7) ☒ Claim(s) 3 and 31 is/are objected to.
- 8) ☒ Claim(s) See Continuation Sheet are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

Continuation of Disposition of Claims: Claims subject to restriction and/or election requirement are 1-6,20-22,24,28-34,36,38-43,45-48 and 50-52.

DETAILED ACTION

Allowable Subject Matter

1. The indicated allowability of claims 1-6,20-22,24,28-34,36,43,45-48,50-52 is withdrawn in view of the newly discovered reference(s) to Kolody 4,832,231. Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-2,4-6,20-22,24,28-29,43,46-48,50, are rejected under 35 U.S.C. 102(e) as being anticipated by Kolody 4,832,231.

Kolody discloses a selection manifold for use with a beverage dispenser (col. 1, ll. 9-12), which comprises a manifold block (20) containing one or more cells, each of the one or more cells having an outlet opening on a face thereof and at least first and second inlet openings on the face wherein the first and second inlet openings reside on either side of the outlet opening as seen in Figure 2, a selector mechanism (40), a first position in which fluid entering the cell from the first inlet opening can pass to the outlet opening and fluid from the second inlet is prevented from entering the cell as seen in Figure 4, a second position in which fluid entering the cell from the second inlet opening

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can pass to the outlet opening and fluid from the first inlet opening is prevented from entering the cell as seen in Figure 5, a lock (50), a multiple cells figure 8.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 30,45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kolody 4,832,231.

Kolody has taught all the features of the claimed invention except that the selector mechanism allows selection between carbonated water and non-carbonated water, and as well as the claimed subject matter in claim 11.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute Kolody's product in each compartment to be carbonated and non-carbonated or beer and wine, as these products are equivalent beverages dependent on the need of the users.

6. Claims 32-34,36,51-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kolody 4,832,231.

Kolody discloses a beverage selection manifold (col. 1, ll. 9-12), which comprises a manifold body (20) containing one or more cells, each of the one or more cells having an outlet opening on a face thereof and at least first and second inlet openings on the face wherein the first and second inlet openings reside on either side of the outlet

opening as seen in Figure 2, at least one body (40), a first position in which fluid entering the cell from the first inlet opening can pass to the outlet opening and fluid from the second inlet is prevented from entering the cell as seen in Figure 4, a second position in which fluid entering the cell from the second inlet opening can pass to the outlet opening and fluid from the first inlet opening is prevented from entering the cell as seen in Figure 5. Kolody lacks that the manifold body being rectangular.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the manifold body of Kolody to be a rectangular shape, since it has been held that a change in the shape of the element involves only routine skill in the art. *In re Dailey*, 149 USPQ 47 (CCPA 1966).

Please note that the recitation "a beverage selection manifold for controlling fluid flow therein of carbonated and non-carbonated water for mixing with a syrup to form a beverage" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

With respect to claim 34, the first and second inlet orifices are configured for flow of carbonated water and non-carbonated water.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute Kolody's product in each compartment to be carbonated and non-carbonated, as these products are equivalent beverages dependent on the need of the users.

Allowable Subject Matter

7. Claims 38-42, are allowed.
8. Claims 3,31, are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick C. Nicolas whose telephone number is (571)-272-4931. The examiner can normally be reached on Monday - Friday from 9:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver, can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Frederick C. Nicolas/
Primary Examiner, Art Unit 3754